



Charles Merten <cjmerten@gmail.com>

April 20**Charles Merten <cjmerten@gmail.com>****Fri, Apr 10, 2009 at 10:27 AM****To: Joe Charter <charter@ashlandoregon.org>**

Joe, I installed a new software program on my office computer and so far I cannot figure out how to respond to emails that came in before I installed it. So, that is the reason to the no response to your suggestion of April 20 for the status conference with the court. That is fine with me.

I been interrupted by a lot of court work and income tax filing, so I haven't yet finished drafting the responses to your Interrogatories. Likewise, I have not yet received the documents you mailed last week.

This is your notice that I want to take the depositions of your two clients and their son, Jamie Jr. in May. I could take the three of them in one and one half days, or less, and you could follow with Bonnie's. I currently am open the week of May 11. Are you?

Thanks, Charley

EXHIBIT A
Page 1 of 22



Charles Merten <cjmerten@gmail.com>

Activity in Case 1:08-cv-01159-CL McElrath v. Fish Rite, Inc. et al Scheduling Conference

info@ord.uscourts.gov <info@ord.uscourts.gov>
To: nobody@ord.uscourts.gov

Tue, Apr 28, 2009 at 12:54 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 4/28/2009 at 1:54 PM PDT and filed on 4/27/2009

Case Name: McElrath v. Fish Rite, Inc. et al

Case Number: 1:08-cv-1159

Filer:

Document Number: 22(No document attached)

Docket Text:

MINUTES of Proceedings: Scheduling Conference held. A status report regarding discovery issues is due by 05/12/2009. A Status Conference is set for 5/15/2009 at 10:00AM in Telephone before Magistrate Judge Mark D. Clarke. The Court will initiate the call. Discovery is to be completed by 9/15/2009. Joint Alternate Dispute Resolution Report is due by 10/15/2009. Pretrial Order and/or Dispositive Motions are due by 10/15/2009. An In Person Pretrial Conference is set for 2/1/2010 at 10:00AM in Medford before Magistrate Judge Mark D. Clarke. A 3-day Jury Trial is set for 2/10/2010 at 09:00AM in Medford before Magistrate Judge Mark D. Clarke. Trial Management Order to follow. Charles Merten present as counsel for plaintiff. Joseph Charter present as counsel for defendants. Ordered by Magistrate Judge Mark D. Clarke. (rsm)

1:08-cv-1159 Notice has been electronically mailed to:

Charles J. Merten cjmerten@gmail.com

Gregory Kafoury kafoury@kafourymcdougal.com

Joseph M. Charter charter@ashlandoregon.org

EXHIBIT A
Page 2 of 22

Hon. Mark Clark

May 11, 2009

Page Two

8) RFP #27: All telephone records reflecting any calls made or placed by you during March and April, 2007. Mr. Merten has indicated that "I will send them to you when I have them," but they have not been received.

Plaintiff's Discovery Requests:

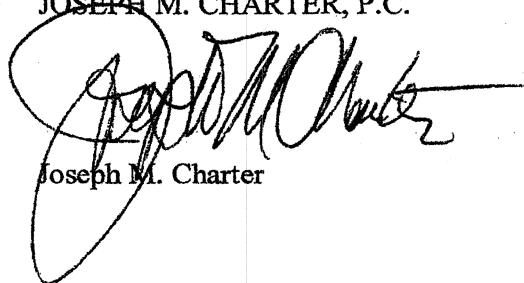
1) RFP #3: The entire state and federal income tax returns of each defendant for all calendar and/or fiscal years of 2004 to date. The courts are typically reluctant to require the production of tax returns because they often contain irrelevant confidential information, unless the information is not otherwise obtainable from other sources. *Van Westrienen v. Americontinental Collection Corp.*, 189 FRD 440 (D.Or.1999), *National Gas Pipeline Co. of America v. Energy Gathering, Inc.*, 2 F.3D 1397 (5th Cir. 1993). Defendants have proposed to provide Plaintiff the corporate 2004-1Q09 P&Ls, and a summary of their individual wage and AGI information for the same period, subject to a protective order.

2) RFP #7: The attendance records for all Fish Rite, Inc.'s employees between January 1, 2002 and this date. Defendants have objected that this request is overly broad, unduly expensive and burdensome, and oppressive. Defendants began an automated time clock system in 2006 and are willing to provide those records if they can be easily generated from computer files. However, before that system, the company would have go through personnel records manually back to 2002, search for and copy hand punched time cards. This would be unduly burdensome.

3) RFP #7: All orders for any and all Fish Rite, Inc.'s, products between January 1, 2005 and this date. Defendants have objected that this request is overly broad, unduly expensive and burdensome, will not lead to the discovery of relevant, admissible evidence, and that the information sought consists of trade secrets and/or confidential commercial information. Defendants have proposed to produce summary documents, subject to a protective order.

Very truly yours,

JOSEPH M. CHARTER, P.C.



Joseph M. Charter

c: Charles Merten
client



Charles Merten <cjmerten@gmail.com>

Activity in Case 1:08-cv-01159-CL McElrath v. Fish Rite, Inc. et al Trial Management Order

info@ord.uscourts.gov <info@ord.uscourts.gov>
To: nobody@ord.uscourts.gov

Wed, Apr 29, 2009 at 9:58 AM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 4/29/2009 at 10:58 AM PDT and filed on 4/29/2009

Case Name: McElrath v. Fish Rite, Inc. et al

Case Number: 1:08-cv-1159

Filer:

Document Number: 23

Docket Text:

Trial Management Order: for 3-day trial commencing on 02/10/2010. Pretrial Documents are due by 1/8/2010; 01/15/2010 and 01/22/2010. Please access entire text by document number hyperlink. Signed on 04/28/2009 by Magistrate Judge Mark D. Clarke. (rsm)

1:08-cv-1159 Notice has been electronically mailed to:

Charles J. Merten cjmerten@gmail.com

Gregory Kafoury kafoury@kafourymcdougal.com

Joseph M. Charter charter@ashlandoregon.org

Mark Gillis McDougal mcdougal@kafourymcdougal.com, receptionist@kafourymcdougal.com

1:08-cv-1159 Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename: Not Available

EXHIBIT A
Page 4 of 22



Charles Merten <cjmerten@gmail.com>

McElrath v Fish Rite, No 08-1159-KI

Joe Charter <charter@ashlandoregon.org>

Fri, May 15, 2009 at 12:31 PM

To: Charles Merten <cjmerten@gmail.com>, rebecca_moore@ord.uscourts.govCc: Mark_clarke@orduscourts.gov

Judge Clarke: This will confirm that Mr. Merten and I believe that we have most discovery issues worked out; although some issues may not be finally resolved, depending on our respective review of the documents we have agreed today to produce to each other. Specifically, I understand that Plaintiff will produce documents outlined in my letter, paragraphs 1-3 and 5-7, if they exist. In addition, Mr. Merten will request and review Plaintiff's medical records before deciding whether to produce them. I am prepared to produce Plaintiff's request outlined in paragraphs 1 & 3 (page two) of my letter, once I have an agreed Protective Order from Mr. Merten. On the burden argument for the manual review of personnel files back to 2002, I am informed there are approximately 73 files, and that review and copying would take approximately 30 hours at a cost of \$450. Thank you for your attention to this matter.

Joe Charter, Attorney

800 W. Eighth

Medford, OR 97501

Ph: (541) 779-9330

Fax: (541) 773-3653

Cell: (541) 944-4297

Web: www.JoeCharter.Info

----- Original Message -----

From: Charles Merten**To:** rebecca_moore@ord.uscourts.gov**Cc:** Mark_clarke@orduscourts.gov ; Joe Charter**Sent:** Friday, May 15, 2009 11:45 AM**Subject:** McElrath v Fish Rite, No 08-1159-KI

[Quoted text hidden]

EXHIBIT A
Page 5 of 22



Charles Merten <cjmerten@gmail.com>

McElrath v. Fish Rite Inc. 08-1159

Mark_Clarke@ord.uscourts.gov <Mark_Clarke@ord.uscourts.gov>**Thu, May 21, 2009 at 9:28 AM**

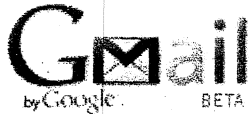
To: cjmerten@gmail.com, charter@ashlandoregon.org

Counsel Thank you for working well together to resolve most discovery issues. It is the general rule that the responding party bear the cost of responding to reasonable discovery requests. The court finds that plaintiffs' request for the attendance records is reasonable in light of defendants defense in the case and that defendant Fish Rite shall bear the cost of producing the requested records.



Mark Clarke
United States Magistrate Judge
District of Oregon
(541)608-8750

EXHIBIT A
Page 6 of 22



Charles Merten <cjmerten@gmail.com>

McElrath**Charles Merten <cjmerten@gmail.com>****To: Joe Charter <charter@ashlandoregon.org>****Tue, Oct 6, 2009 at 12:13 PM**

Joe, by Oct 15 we are supposed to file a pretrial order or tell the judge that we waive it. I propose we waive it. I have never found the pretrial order to be useful. The pleadings and jury instructions take care of everything. Let me know.

Your client was order to produce records. I have not received anything from you. Please get them to me by October 16.

This is your notice that I will depose the defendants and Jamie Dorsey Jr. on Oct. 28 and 29 at your office. If you have an unmovable conflict, I am open to other dates. Please designate a witness to testify at deposition for the defendant corporation about the following:

EXHIBIT A
Page 7 of 22



Charles Merten <cjmerten@gmail.com>

McElrath**Charles Merten <cjmerten@gmail.com>****Tue, Oct 6, 2009 at 12:20 PM**

To: Joe Charter <charter@ashlandoregon.org>

1. the corporations employment policies relating to tardiness;
2. the identify of corporate officers, managers, and agents over time, and their authority;
3. the income and assets of the corporation;
4. the policies of the corporation over time regarding employment discrimination, including sexual discrimination;

Thanks, Charley

[Quoted text hidden]

EXHIBIT A
Page 8 of 22



Charles Merten <cjmerten@gmail.com>

McElrath

Joe Charter <charter@ashlandoregon.org>

Wed, Oct 7, 2009 at 6:57 AM

To: Charles Merten <cjmerten@gmail.com>

Charley: We were waiting for your protective order before producing documents.

Joe Charter, Attorney

800 W. Eighth

Medford, OR 97501

Ph: (541) 779-9330

Fax: (541) 773-3653

Cell: (541) 944-4297

Web: www.JoeCharter.Info

----- Original Message ----- From: "Charles Merten" <cjmerten@gmail.com>

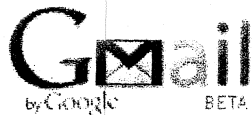
To: "Joe Charter" <charter@ashlandoregon.org>

Sent: Tuesday, October 06, 2009 1:13 PM

Subject: McElrath

[Quoted text hidden]

EXHIBIT A
Page 9 of 22



Charles Merten <cjmerten@gmail.com>

McElrath

Charles Merten <cjmerten@gmail.com>

Wed, Oct 7, 2009 at 8:27 AM

To: Joe Charter <charter@ashlandoregon.org>

remind me. what protective order? Charley

[Quoted text hidden]

EXHIBIT A
Page 10 of 22



Charles Merten <cjmerten@gmail.com>

McElrath

Joe Charter <charter@ashlandoregon.org>

Wed, Oct 7, 2009 at 9:01 AM

To: Charles Merten <cjmerten@gmail.com>

Charley: What I have is my May 11 letter to Judge Clarke, marked up during our teleconference. Page 2, items 1 & 3 end with "subject to a protective order" and my notes indicate "OK." We've been waiting for that to produce what we have.

Joe Charter, Attorney

800 W. Eighth

Medford, OR 97501

Ph: (541) 779-9330

Fax: (541) 773-3653

Cell: (541) 944-4297

Web: www.JoeCharter.Info

----- Original Message ----- From: "Charles Merten" <cjmerten@gmail.com>

To: "Joe Charter" <charter@ashlandoregon.org>

Sent: Wednesday, October 07, 2009 9:27 AM

Subject: Re: McElrath

[Quoted text hidden]

EXHIBIT A
Page 11 of 22



Charles Merten <cjmerten@gmail.com>

McElrath

Joe Charter <charter@ashlandoregon.org>

Wed, Oct 7, 2009 at 9:57 AM

To: Charles Merten <cjmerten@gmail.com>

Cc: Sylvia <Sylvia@ashlandoregon.org>

Never mind, we found what we sent you.

- 1) policies were provided to BOLI and you should have in their file.
- 2) corporate records will be produced, but there would be no other responsive documents. Simple depo question to verify or get history.
- 3) Tax returns and sales volumes will be produced, once we have the P.O.
- 4) The complete policy handbook will be produced.

I'm copying this to new secretary Sylvia. Your staff can work out any logistical details directly with her. In general, I will get you whatever you need on reasonable notice, just need to have an acceptable protective order signed and entered.

Joe Charter, Attorney

800 W. Eighth

Medford, OR 97501

Ph: (541) 779-9330

Fax: (541) 773-3653

Cell: (541) 944-4297

Web: www.JoeCharter.Info

----- Original Message ----- From: "Charles Merten" <cjmerten@gmail.com>

To: "Joe Charter" <charter@ashlandoregon.org>

Sent: Tuesday, October 06, 2009 1:20 PM

Subject: Fwd: McElrath

[Quoted text hidden]

EXHIBIT A
Page 12 of 22



Charles Merten <cjmerten@gmail.com>

McElrath**Joe Charter <charter@ashlandoregon.org>****Wed, Oct 7, 2009 at 9:59 AM****To: Charles Merten <cjmerten@gmail.com>****Cc: Sylvia <Sylvia@ashlandoregon.org>**

Charley: Thurs. and Fri. Oct. 29 and 30 are available. Oct. 28 is my regular traffic court calendar and is immovable. Shall we get the court reporter?

Joe Charter, Attorney

800 W. Eighth

Medford, OR 97501

Ph: (541) 779-9330

Fax: (541) 773-3653

Cell: (541) 944-4297

Web: www.JoeCharter.Info

----- Original Message ----- From: "Charles Merten" <cjmerten@gmail.com>

To: "Joe Charter" <charter@ashlandoregon.org>

Sent: Tuesday, October 06, 2009 1:13 PM

Subject: McElrath

[Quoted text hidden]

EXHIBIT A
Page 13 of 22

Charles Merten <cjmerten@gmail.com>

McElrath

Joe Charter <charter@ashlandoregon.org>

Wed, Oct 7, 2009 at 10:02 AM

To: Charles Merten <cjmerten@gmail.com>

Our proposed order would be Barbara, then the Jamies, Jr. then Sr., then Bonnie. We probably want to minimize Barbara's time in the room with Bonnie. Is that agreeable?

Joe Charter, Attorney

800 W. Eighth

Medford, OR 97501

Ph: (541) 779-9330

Fax: (541) 773-3653

Cell: (541) 944-4297

Web: www.JoeCharter.Info

----- Original Message ----- From: "Charles Merten" <cimerten@gmail.com>

To: "Joe Charter" <charter@ashlandoregon.org>

Sent: Tuesday, October 06, 2009 1:13 PM

Subject: McElrath

[Quoted text hidden]

EXHIBIT A
Page 14 of 22



Charles Merten <cjmerten@gmail.com>

McElrath

Joe Charter <charter@ashlandoregon.org>

Wed, Oct 7, 2009 at 10:16 AM

To: Charles Merten <cjmerten@gmail.com>

Cc: Sylvia <Sylvia@ashlandoregon.org>

I don't want to waive the P.T.O. but I am willing to defer it until after the holidays.
I'm also doing a notice of deposition for the BOLI investigator, Donna Meredith, so we will need to fit that in.
We could do that by phone conference call.

Joe Charter, Attorney

800 W. Eighth

Medford, OR 97501

Ph: (541) 779-9330

Fax: (541) 773-3653

Cell: (541) 944-4297

Web: www.JoeCharter.Info

----- Original Message ----- From: "Charles Merten" <cjmerten@gmail.com>

To: "Joe Charter" <charter@ashlandoregon.org>

Sent: Tuesday, October 06, 2009 1:13 PM

Subject: McElrath

[Quoted text hidden]

EXHIBIT A
Page 15 of 22



Charles Merten <cjmerten@gmail.com>

McElrath

Charles Merten <cjmerten@gmail.com>**Wed, Oct 7, 2009 at 2:17 PM****To:** Joe Charter <charter@ashlandoregon.org>**Bcc:** Bonnie McElrath <bruce@roguejet.com>, "Charles J. Merten" <cjmerten@gmail.com>

Joe, I will be much longer with Jamie Sr. than with Barbara, so I want to start with him first. Barbara can be next, then Jamie Jr. My client will not have a problem with Barbara being in the room. I need to confirm with Bonnie that she can be there on the 29th and 30th. I will address the other issues tonight, I am trying at the moment to get my vineyard ready for picking. Charley

[Quoted text hidden]

EXHIBIT A
Page 16 of 22



Charles Merten <cjmerten@gmail.com>

McElrath v. Fish Rite and Dorsey, et ux.

Sylvia Lakey <sylvia@ashlandoregon.org>**Tue, Oct 20, 2009 at 8:14 AM**

To: cjmerten@gmail.com

Cc: "Joe Charter (E-mail)" <charter@ashlandoregon.org>

Dear Mr. Merten:

This follows your phone call to our office this morning requesting to reschedule the 10/28/09 and 10/29/09 depositions in the above matter for the reason you have a conflict trial in Benton County. After speaking with Mr. Charter, we have a glitch in the proposed rescheduling of the depositions from the above date to 11/5/09, 11/6/09 and the morning of 11/7/09.

It appears that 11/19/09 and 11/20/09 work well with Mr. Charter's schedule and perhaps we can begin early on both days to keep from having to spend a Saturday finishing up the depositions.

Please advise.

Thank you,
SYLVIA A. LAKEY
Asst. to Joseph M. Charter, Esq.
(541) 779-9330
sylvia@ashlandoregon.org

EXHIBIT A
Page 17 of 22



Charles Merten <cjmerten@gmail.com>

McElrath v. Fish Rite and Dorsey, et ux.

Charles Merten <cjmerten@gmail.com>

Thu, Oct 22, 2009 at 2:47 PM

To: Sylvia Lakey <sylvia@ashlandoregon.org>

He, Sylvia. Tell Joe that November 19 and 20 work for both Bonnie and me. I still worry as to whether we can do all 5 depositions in two days, but I am willing to give it a go. I will be video taping the depositions I take.

On Tue, Oct 20, 2009 at 9:14 AM, Sylvia Lakey <sylvia@ashlandoregon.org> wrote:

[Quoted text hidden]

EXHIBIT A
Page 18 of 22



Charles Merten <cjmerten@gmail.com>

McElrath v. Fish Rite and Dorsey, et ux.

Charles Merten <cjmerten@gmail.com>

Thu, Oct 22, 2009 at 2:51 PM

To: Sylvia Lakey <sylvia@ashlandoregon.org>

Sylvia, also tell Joe that I will try to get a protective order emailed to him tomorrow for defendants' financial information, although he is the one who wanted one. Also, the judge ordered that attendance records of all employees during a specific time period be produced by Fish Rite. He did not require a protective order as part of his ruling. Those should be mailed up early next week. Thanks, Charley Merten

On Tue, Oct 20, 2009 at 9:14 AM, Sylvia Lakey <sylvia@ashlandoregon.org> wrote:

[Quoted text hidden]

EXHIBIT A
Page 19 of 22



Charles Merten <cjmerten@gmail.com>

McElrath v. Fish Rite and Dorsey, et ux.

Charles Merten <cjmerten@gmail.com>

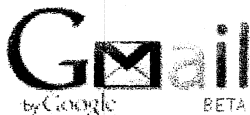
Wed, Oct 28, 2009 at 1:53 PM

To: Sylvia Lakey <sylvia@ashlandoregon.org>

Will do. In the meantime, I am emailing to Joe a confidentiality agreement covering tax returns and Fish Rite orders. The original will be mailed today. He can use either the emailed version or the original. Charley

[Quoted text hidden]

EXHIBIT A
Page 20 of 22



Charles Merten <cjmerten@gmail.com>

McElrath v. Fish Rite, et al

Joe Charter <charter@ashlandoregon.org>**Thu, Oct 29, 2009 at 10:47 AM****To:** Receptionist <receptionist@kafourymcdougal.com>**Cc:** Charles Merten <cjmerten@gmail.com>

Charles: I made a few changes in your proposed protective order. Instead of spending a lot of time going back and forth, I have signed the revision. If the changes are acceptable to you, please sign and fax or email back and we will produce the additional documents. The changes are:

1) inserting "designated" and any additional income information in paragraph 2. Some documents have already been bates stamped, and they will be designated by bates # range instead of being stamped "Confidential."

2) Adding deposition transcript designations to that paragraph and paragraph 5, along with instructions for filing any confidential material with the court.

3) Eliminating your paragraph 10. I acknowledge that you may argue that a confidential designation can be waived, but that issue should be dealt with outside this stipulation. As written, you could potentially claim a waiver and disclose without notifying me or the court.

Again, documents will be sent once we receive your signature.

Joe Charter, Attorney

800 W. Eighth

Medford, OR 97501

Ph: (541) 779-9330

Fax: (541) 773-3653

Cell: (541) 944-4297

Web: www.JoeCharter.Info

[Quoted text hidden]

**Stipulated Protective Order.pdf**

586K

EXHIBIT A
Page 21 of 22



Charles Merten <cjmerten@gmail.com>

McElrath v. Fish Rite, Inc. SPO

Receptionist <receptionist@kafourymcdougal.com>

Fri, Oct 30, 2009 at 7:33 AM

To: Charles Merten <cjmerten@gmail.com>, "charter@ashlandoregon.org" <charter@ashlandoregon.org>

Dear Mr. Charter,

Attached is the Stipulated Protective Order signed by Mr. Merten.

Thank you.

Dennis Hall
503-224-2647

20091029172214.pdf

722K

EXHIBIT A
Page 22 of 22